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Method, Community & Comparative Law: A Encounter With Complexity Science

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Method, Community & Comparative Law: An Encounter With Complexity Science

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Assume that you are attending a symposium on comparative law being held in conjunction with the annual meeting of the American Society for Comparative Law. Comparative law scholars from many universities are present, and a few legal practitioners are attending as well.[2] One speaker begins as follows: "This talk will be about complex adaptive systems – the emerging science of complexity." Based on experience in similar contexts, I would anticipate several common reactions among members of the audience. The most common might be "he's in the wrong room." Another set of reactions is likely to be "What? What's that? Never heard of it!" A third might be "What possible relevance can that have for comparative law?" Beneath these specific responses – and less likely to be expressed – is an assumption that this type of scientific discussion is alien and potentially inimical to the world of comparative law. The "scientific" language of the subject is likely to seem foreign to many, and the idea of a tie to comparative law is often perceived as not only foreign, but also perhaps threatening.[3]

I use this imagined scenario as a window into the topic of the symposium: methodological approaches to comparative law. It

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2. This essay is adapted from a talk given at the Annual Meeting of the American Society of Comparative Law, October, 2009, at Roger Williams University School of Law in Bristol, Rhode Island.

3. This hypothetical situation is based, in part, on my experience at the previously referenced conference.

provides a perspective on thinking about comparative law methods and a means of locating those methods in relation to other potentially relevant academic pursuits. The reactions to which I refer reveal much about comparative law at the outset of the twenty-first century.[4]

As we shall see, the issue of comparative law's methods (or lack thereof) plays an important role in this analysis. Methods typically shape and define the agenda of academic and other knowledge communities. They provide a common reference point for members of the community, and they represent an important source of professional identity for individuals within those communities. An individual who writes about economic issues, for example, cannot today be considered an "economist" unless s/he utilizes a set of methodological reference points referred to as neo-classical economics. There may be significant variations in the use of these tools and in the assumptions made in applying them, and there are degrees and varieties of methodological constraints. Despite these variations, this methodological core is central to the identity of members of the profession. Discussions of method can be overblown, overdone and vacuous, but they also can shape the product of a knowledge community, relations among community members, and their ties to other intellectual communities.

Comparative law does not have a well developed set of core methodological propositions, and this has important implications for each of these domains – its relevance, its interaction with other intellectual communities, and, ultimately, the work it produces. A scholar who considers her work "comparative" or considers herself "a comparatist" has reason to be concerned about the minimalist content of those terms.

It is important to emphasize the narrow focus of these comments on comparative law and complexity science. I do not claim here that comparative law should follow complexity science or any science for that matter. Nor do I suggest that comparative law scholars need to study complexity theory, although many might gain insights from such study. I also do not argue that complexity science is necessarily directly relevant to specific comparative law issues. My concern here is with the relationship

4. I refer here specifically to the situation in the United States, but the situation is similar in many other comparative law communities.

between comparative law and other academic disciplines, in particular, the discourses of science. Finally, I do not claim any level of expertise in complexity science. I use it here for the sole purpose of providing insights into comparative law.

This essay looks briefly at complexity science in order to set the stage for more analytical comments about its potential relevance to comparative law. It identifies some forms of value that comparative law may derive from complexity science and probes why there has been virtually no interest in this field among comparative law scholars and why mention of the topic alone tends to elicit negative or, at least, distancing reactions. I then note some of the potential implications of this indifference and, perhaps, "angst."

I. BRIEF OVERVIEW OF COMPLEXITY SCIENCE

Why do I use complexity science (more accurately, the science of complex adaptive systems) for this exercise? First, it is a relatively new scientific field that has taken shape over the last few decades and that has only begun to generate widespread attention during the last decade or two.[5] This allows us to focus on a brief time frame. It also reduces potential research "noise" from past experience or from claims that elements of complexity science might have osmosed into the thinking of comparative law over a period of years. Second, complexity science has similar subject matter and similar objectives to those of comparative law, for example, both seek to understand systems, their operations and their consequences. Complexity science studies systems in general, while comparative law deals with a specific type of system – namely, legal systems. Third, both are "tool" endeavors. They are not limited to the substantive outcomes of a particular system, but seek to understand commonalities and differences among and between systems. Just as complexity theory can be applied to biology, economics or any other area of the social or natural worlds, so too, comparative law is understood as applicable to comparisons among legal systems or components of legal systems of any kind.

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5. For introductory discussions, see, e.g., JOHN H. MILLER & SCOTT E. PAGE, COMPLEX ADAPTIVE SYSTEMS (2007); *see also*, MELANIE MITCHELL, COMPLEXITY: A GUIDED TOUR (2009).

Given these similarities, one might expect comparative law scholars to take a lively interest in complexity science. In seeking to understand why they not only fail to take interest, but also tend to react with indifference or even hostility to suggestions that complexity science may be relevant to what they do, we need first to look at complexity science, searching for clues as to why it is perceived as alien to the world of comparative law.

Complexity science has developed primarily since the 1980s, although it has identifiable roots in the preceding decades. In the early stages of its development, scholars trained in game theory and mathematics were often in the forefront of development. Typically, these analysts had early access to and familiarity with computers, and they began to recognize that computers could be used to analyze systems in ways that were impossible without such computing tools. It is important to emphasize, however, that from the beginning scholars in other fields (primarily in the social sciences) recognized the potential value of analyzing systems with these kinds of cross disciplinary tools.

As the discipline has grown in importance, it has also become increasingly interdisciplinary in emphasis. Although leading figures in the field still typically have backgrounds in mathematics or game theory, the scope of the field has expanded, and this type of training is not a prerequisite for playing a significant role in it. Scholars in the field emphasize that it is and must remain an interdisciplinary field that includes and analyzes input from scholars in many fields. The methodology of complexity theory has been applied in "hard" sciences such as biology and chemistry, but also in the social sciences, most prominently among economists, sociologists and political scientists. The Santa Fe Institute[6] has been the prime "think tank" for this new area of science.

The research subject in the field is systems. Specifically, it is a particular kind of system known as a complex adaptive system (or "complex system"). Such systems have four basic characteristics.[7] First, the components must be diverse. If all

6. SANTA FE INSTITUTE, http://www.santafe.edu (last visited Nov. 10, 2010).

7. The terms and frameworks of complexity science are not as firmly established as they tend to be in more traditional areas of science.

identified components of the system are the same – for example, if all are buyers – it cannot be a complex system. Second, the components must be interconnected in that they must be related to each other in space or in some other definable medium. Third, the components must be interdependent in the sense that the actions of one component of the system will have potential consequences for other components of the system. Finally, in a complex system, each component reacts or may react to any or all of the other components of the system

Complexity science reveals that systems often have common properties and exhibit common patterns in the interactions among their components and in the consequences these interactions produce (referred to as "emergent properties"). These can be studied, and principles can be derived that apply to all (or most) such systems. In this sense, it is basic science – i.e., a science that studies principles that can be universally or at least widely applied.

Complexity analysts find complex systems virtually everywhere. For example, a pond constitutes a complex system. It has diverse elements; they are related to each other – principally by physical proximity and the water of the pond; they are interdependent in the sense that actions of one component can influence all other components; and each can react to the actions of others. Other examples of complex adaptive systems that have been studied include chemical interactions, traffic grids, markets, and families. Legal systems could also be added to the list.

Developments that can roughly be subsumed under the label of "globalization" exponentially increase the complexity and scope of systemic interactions and the importance of understanding how they work and the properties they generate. As communication becomes more rapid and transportation becomes more accessible and effective, for example, the impact of developments in one part of the world increasingly cause effects in widely disparate communities and locations that become part of global or regional systems.

Complexity analysts claim that traditional scientific methods are inadequate to deal with these interactions, largely because they were developed to achieve other objectives and with other tools. The new science is, in contrast, specifically designed to deal with these issues, and it uses previously unavailable technology –

i.e., advanced computer capabilities – to identify patterns of operation within systems and the "properties" produced by them.

The basic method used in complexity science is called "agent–based modeling." It is a computational method that requires appropriate computing resources. In its most basic form, the analyst identifies the components of a system and assigns each a set of so-called "rules." These are modeling devices that identify specific characteristics of the system components so that interactions within the system can be isolated and more effectively studied and analyzed. To use an oversimplified example, the analyst may identify several types of possible reactions of one or more of a system's components (e.g., one species of fish in a pond or one type of seller in a market) to changes in the condition, position or conduct of one of the other components of the system (e.g., changes in the availability of a plant eaten by the fish in question or changes in the insurability of risks of other potential sellers in the designated market). Using these "rules," computer simulations can then reveal patterns of interaction among system components. This can identify unanticipated and perhaps distant interactions that other forms of analysis could not identify, and it can isolate "emergent properties" of the system – i.e., outcomes produced by these interactions.

Applying these tools calls for identifying the dimensions of the system, including its borders and components. The analyst must identify the characteristics of the components and assess the degree of diversity within the system. It is then necessary to apply or develop appropriate measures of connectedness – how are the components situated in relation to each other? A further step is to identify the interactions among the components. Finally, the analyst seeks to identify the "emergent properties" of the system. All of this is to be done in as precise a manner as possible, so that hypotheses can be further tested and results shared and evaluated.

The rapid progress of complexity science in university faculties in recent years attests to its perceived potential value in many areas. There are now departments of complexity science in dozens of universities, and there are numerous journals devoted entirely or primarily to the field.[8] A priori at least, this kind of

8. *See* COMPLEXITY DIGEST, http://comdig.unam.mx (last visited Nov. 5,

analysis of systems could be of significant value in analyzing legal systems and their interactions with other systems and other players.

II. POTENTIAL VALUE FOR COMPARATIVE LAW

What value might complexity science offer for comparative law? I do not here explore this question in depth, leaving that perhaps for another time. My objective is merely to sketch areas of some potential value, not to persuade comparative law scholars that such potential value can be realized or to demonstrate how it can be realized. If the potential value is identifiable and appears to be reasonably accessible, one would expect there to be at least some interest among those who consider themselves to be doing comparative law.

The potential value of complexity science for comparative law scholars derives from the fact that the primary subject matter of both is systems and that both ask the same basic questions about systems.[9] Both ask what the elements of systems are, how they work, what results they produce and how they relate to other systems. Complexity science trains its attention on systems in general; comparative law deals with a particular kind of complex system – namely, legal systems. Whatever principles can be identified as applicable to systems in general can be expected to be applicable to legal systems. This hypothesis can then be tested. Where principles applicable to other systems appear inapplicable to a legal system (or systems) the differences can be evaluated. Why are they different? In what ways are they different? What are the consequences that are likely to flow from such differences? Answering these questions can produce valuable insight into legal

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2010); *see also* Chaos and Complexity Systems Seminar, UNIVERSITY OF WISCONSIN-MADISON, http://sprott.physics.wisc.edu/chaos-Complexity (last visited Dec. 28, 2010). More than thirty academic institutions have complexity science departments or groups, and there are at least five independent organizations that are dedicated entirely to complexity science. In addition, at least nineteen academic journals are dedicated in whole or in part to complexity science research.

9. Some comparative law scholars might object, claiming that the work that they do focuses not on systems as such, but on specific problems or specific issues. Those specific issues and problems become "comparative," however, only when there is comparison across systems. Thus issues of system are implicit in any such endeavor.

systems.

A. Potential Benefits for the Quality and Content of Comparative Legal Analysis

More specifically, complexity analysis may provide value by enriching the methodological language and perspectives of comparative law and thus the products of comparative analysis. Complexity science is developing ways of understanding systemic relationships and interactions that may provide new and valuable perspectives on legal comparison. At the very least it can expand the conceptual and analytical tools available to comparative law scholars. For example, complexity analysis identifies measures of difference and distance among elements of a system that may be useful – perhaps in modified form – in comparing legal systems.

Rooted in the sciences, this language seeks precision and transferability. It strives to develop concepts with relatively sharp definitions and edges. This allows the science to develop as a process of interaction among scholars and other users, as each uses and refines the language. Such efforts to develop and apply conceptually precise and transferable language are rare in comparative law, contributing to its perceived opacity and to the "ad hoc" character of much comparative law scholarship. It also means, however, that comparative law scholars are not likely to simply accept the language of complexity science. Moreover, they should not. Their subject matter has specific features of its own, and their audiences and incentives differ from those of many in the natural and social sciences. Nevertheless, the language provides potential reference points that might be adapted for use in comparative law.

B. Potential Benefits for Comparative Law's Relevance

Complexity science may also have value for the relevance of comparative law – in particular, for its relationships to other academic communities and projects. To the extent that it provides or encourages comparative law specialists to develop a more identifiable framework for analysis and research, it can be expected to enhance the potential value of comparative law to others who may be interested in legal phenomena, but who have difficulty knowing what the language and reference points of

comparative law scholarship are. Similarly, to the extent that comparative law uses a language and a set of concepts that are transferable to other social domains, comparative law research can be more easily understood and used by scholars who use similar language. For example, complexity science can provide a bridge to those in the social sciences who are engaged in empirical research. It could, for example, provide a format for empirical research that would be directed specifically at the analysis of legal systems. Comparative law scholars could use it to access empirical research in other areas, and scholars in other knowledge fields could use it to identify and comprehend comparative law research and perhaps relate their own work to it.

Finally, complexity science provides a point of comparative reference for the efforts of comparative law itself. It can give comparative law scholars insight into what they do by allowing comparisons with others who operate in a related field with similar objectives. A central claim in comparative law is that the act of comparison itself provides value by providing perspective on what each legal system does and raising questions about why it does them. This claim can be applied to comparative law scholarship itself.[10] It provides a comparative vantage point. To what extent do the perspectives and methods of complexity science relating to systems differ from the perspectives and methods applied in comparative law? What can be gained from similarities or differences in each approach?

III. REACTIONS: DISTANCE, INDIFFERENCE AND METHODOLOGICAL ANGST

Despite these elements of potential value, comparative law scholars have shown almost no awareness of or interest in complexity science. In fact, they have basically ignored it. Moreover, as noted at the outset, encounters both experienced and imagined feature reactions of distance, indifference and something akin to hostility. Given that complexity science is now well established in many universities and regularly produces books

10. The point here is not that comparatists do not think about these issues. Some certainly do. Typically, however, they do not do so in ways that are shared and that thus promote an ongoing process of refinement of the methods.

and articles, this lack of attention may suggest that comparative law scholars have not perceived significant incentives to seek new perspectives on or improvement in their methods. If they had, such concerns would naturally lead to at least preliminary interest in complexity science. Perhaps the crux of the situation is captured in the question: "How can one think about improving a method if there is no method to improve?" We will return a bit later to this possibility.

A. Some explanations: Isolation as Sub-text

This lack of interest and these reactions of hostility are rooted in the history of comparative law scholarship in the United States, and we can identify some of the factors that have shaped them. They are also part of a larger set of issues – the role and identity of comparative law. In that experience, comparative law methods and the comparative law community have been largely isolated from other forms of academic endeavor. Moreover, scholars of comparative law in the United States since the Second World War have seldom shown sustained interest in developing a common methodological discourse.[11]

Comparative law *as a discipline* has also made limited efforts to contribute to academic developments in other areas, and scholars in other academic disciplines have generally paid little attention to comparative law scholarship *as a discipline.* In general, they tend to view "comparative law" as a loose designation to be applied to scholars who in some way write about foreign legal systems. Many years of reviewing manuscripts for the *American Journal of Comparative Law* have made clear to me that most authors submitting manuscripts have little idea of what comparative scholarship is. Any writing dealing with a foreign legal system may be labeled "comparative law" – regardless of whether it actually relates to more than one system, whether it actually compares, or whether it engages in any type of trans-system analysis.

11. There are, of course, exceptions. For an excellent analysis of some of these issues, see Annelise Riles, *Wigmore's Treasure Box: Comparative Law in the Era of Information*, 40 HARV. INT'L L.J. 221 (1999).

B. The Tasks and Trajectories of Comparative Law

In part, this isolation has been due to the objectives which comparative law scholars have identified. For decades after the Second World War, practice-oriented objectives dominated the agendas of most comparative law scholars.[12] For example, they often had strong incentives to deal with issues related to transnational contracts. This typically meant looking at differences in the formal characteristics of specific legal areas. They answered questions such as "What language should we include in the contract?" "What law would be applicable to the contract if it were evaluated in a foreign or domestic court?" And, "What is the content of the law that might be applicable to this contract?" These were practitioners' questions, but few during those decades had the linguistic and other skills or the communication and research tools necessary to answer them. The task thus often fell to comparative law scholars. Similar tasks arose in the context of international arbitration and in other areas.

Where comparative law scholars treated policy questions, they tended to respond to questions posed by government initiatives. A legislature might ask, "Should we change our law to conform more closely to a foreign law? Or "Is the solution provided by law "A" better than our solution?" Sometimes there have also been international projects that have called for comparative law scholars to identify differences and similarities among systems in order to move toward greater harmonization of laws, but relatively few comparatists have been engaged in such projects.

In addition to the incentive structure that shaped the personal agendas of comparative law scholars, the nature of the task itself has generally been understood as highly "ad hoc." Individual research projects have seldom been viewed in relation to systemic issues that require a deeper and more sustained analysis of their relationships to other problems or to other characteristics of the legal system involved. At least there is little

12. I have treated some of these issues elsewhere, see, e.g., David J. Gerber, *System Dynamics: Toward a Language of Comparative Law*, 46 AM. J. COMP. L. 719-37 (1998). *See generally*, THE OXFORD HANDBOOK OF COMPARATIVE LAW (Mathias Reimann & Reinhard Zimmerman eds., 2006).

evidence that scholars have perceived significant incentives to view their task in terms of systematically identifying cause-effect relationships within and among systems.

More fundamentally, the comparative law task has been seen as one of individual knowledge-heroics – i.e., events in which a single scholar with a particular linguistic facility and perhaps also rare access to certain foreign materials has been asked to overcome linguistic and access hurdles in order to carry out a "mission." From this perspective, acquiring this language facility and this level of access is "hard enough" – why should they also try to tie their heroics to grander themes? This kind of analysis was not likely to call for systematic analysis or consideration of larger issues of method.

C. Globalization's Opportunities

These and other factors have shaped the evolution of comparative law, and they help to explain attitudes common in comparative law. However, one might expect the situation to have changed as a result of the many forms of globalization – economic, communication, transportation, etc. – that have emerged with such prominence during the last two decades. These enhance the potential value of comparative law and the opportunities for comparative law to expand its horizons to deal with those methods and forms of knowledge that are relevant to the changing global legal environment. In other words, these changes might have been expected to alter the sense of methodological isolation of comparative law *as a discipline*. There is, however, relatively little evidence that a major change or re-evaluation is underway or that much has changed in the relationship between comparative law and other academic disciplines.

IV. SOME IMPLICATIONS OF DISTANCE

These attitudes and reactions among comparative law scholars to the new field of complexity science and their general hostility to the very idea that it could be relevant to comparative law appear to reflect a widely-held and deeply rooted view among comparative law scholars of their own field. It is one in which comparative law *as a discipline* is largely isolated from other intellectual endeavors. This image of isolation may have

significant implications for comparative law's roles, opportunities, and even potential value.

One obvious impact is on the perceived relevance of comparative law as a discipline. It is today largely unnoticed (even invisible) *as a discipline.* Few ask questions such as "what does comparative law say about this?" In most recognized disciplines, non-members have some general sense of the kinds of questions that the field addresses. As a result, they know that if they want a particular perspective or a particular kind of data, they can expect to find it among the members of the discipline. I have seen little evidence of that in relation to comparative law.

One example is the discussion of corporation law in United States law schools. Since the 1990s, there has been an ongoing debate about differences in corporation law between the United States, Europe, and Japan.[13] Comparative law scholars have played almost no role in the debate! Essentially, scholars of corporation law and of law and economics have juxtaposed legal systems, developed claims based on limited and sometimes value-laden analysis, and called it "comparative law." There is little evidence that the corporate law scholars engaged in the debate even considered the possibility that scholars of comparative law might have something to contribute using the tools of the discipline. This should be astonishing, but, given what we know about comparative law at this point, it is not.

This perceived distance from other disciplines also tends to constrain and limit the perspectives and horizons of comparative law scholarship, and it may thereby limit the richness, quality, and potential value of that scholarship. Intellectual impulses from other fields can lead comparative law scholars to think about issues they may not have otherwise considered and introduce them to potentially valuable tools that they may not have used. External sources can enrich the vocabulary and methods of comparative law and thus improve the products of the comparative law community. Individual scholars have pursued these advantages effectively, and they have often gained much as a result of them, but these advantages and insights have seldom

13. The literature here is voluminous. For a valuable overview of the issues, see, e.g., CORPORATE GOVERNANCE REGIMES: CONVERGENCE AND DIVERSITY (Joseph A. McCahery et al. eds., 2002).

been incorporated in any shared methodological discussion that could make them valuable to comparative law *as a discipline.*

The above comments obviously are not meant to suggest that individual scholars who specialize in comparative law issues are unimportant or that their work is ignored. Many scholars are very prominent in their fields, and their comparative law backgrounds often give them insights that others often do not have. The issue is rather that comparative law as a discipline or field of study does not have more than a flimsy and uncertain identity. Individual scholars may be important, *but not as comparative law scholars.* In part, this can be attributed to the lack of a central methodological discussion. At present, each comparative law analyst is basically left to find elements of comparison and analytical reference points on his or her own. There is no ongoing discussion of available intellectual tools and experiences that could serve as a basis for sharing research experience and results. Without such a framework for sharing, there are few opportunities to enhance the analytical power of comparative legal analysis and thus motivate, enrich, and sustain individual research efforts.

V. RELATING AND RELEVANCE: METHOD AS A BRIDGE

The lack of a central methodological framework or discussion contributes to this distance in important ways. It tends to inhibit intellectual and professional ties to comparative law *as a discipline.* There have, of course, been discussions of methods in the comparative law literature, and many have been filled with insights of great value. My point here is more specific. It relates to the lack of a central and widely-accepted set of reference points for those discussions. There is no central methodology and no methodological discussion that can give structure to the discourse among comparative law scholars. There is thus little discipline-defining discussion and no real discipline in the sense of a body of scholarship defined by shared methodological propositions.

A. Method and Community

This is not the place to explore in depth the relationship between method and the operations of scholarly or other intellectual communities. The fact that there is an extensive

literature on the issue suggests its widespread importance. We can, however, identify potentially relevant elements of the relationship that can then be applied to the context of comparative law. First, most intellectual communities are defined in some sense by methodological issues. Such a discussion of method has often been critical to the success of the community in the academic world and beyond. One need only refer to the role of economics in law and public policy over the last three decades to glimpse the enormous capacity of a central methodological framework to advance the interests of an academic community.[14]

Methods perform two basic functions. One is internal to the community. It shapes the relationships among members of the community. It gives guidance in the training of new scholars in the field. It relates members of the community to each other, gives them points of reference for discussing work in the field, disseminates information and insights into how issues common to their shared endeavor have previously been handled, and transmits information about the consequences of previous applications of particular approaches to problems. In virtually all cases of which I am aware, the development of a central methodological discussion has tended to concentrate scholarly efforts and establish clearer lines of communication among scholars within the field. In some cases, that discussion has long contained two or more basic methodological orientations, allowing clearer identification of differences among these orientations and useful competition among them for "success." For example, the existence of "rationalist" and "social constructivist" methods in contemporary political science has been highly valuable in structuring discussion and providing insights into the potentials and pitfalls of each.[15]

The external function of a central methodological discussion has many facets, but at its core it gives the field or discipline an identity. In doing so, it creates cognitive "hooks" for those outside the field – i.e., it gives meaning to the label used to refer to the people who use the method. This tends to heighten the

14. For discussion of the kinds of influences a central methodological framework can have, see MELVIN W. REDER, ECONOMICS: THE CULTURE OF A CONTROVERSIAL SCIENCE (1999).

15. *See, e.g.*, THE OXFORD HANDBOOK OF POLITICAL THEORY (John S. Dryzek et al. eds., 2006).

accessibility of the work they do, and it provides a means by which others can relate their own work to the work performed within the discipline. In this sense, it tends to heighten the perceived relevance and importance of the field to those outside it.

B. Method and the Relevance of Comparative Law

Both of these functions can have significant value for comparative law. Perhaps the most obvious value relates to the relevance of comparative law as a discipline. As we have noted, the term "comparative law" is used very loosely – little more than a term for those who doing something with foreign law. As a consequence, the field is generally perceived as relatively amorphous. This means that those outside the field have no "hook" for understanding what scholars in the field do. In turn, if they do not consider comparative law to be a discipline with some type of identifiable contours and status, they are unlikely to perceive incentives for trying to use comparative law work or for offering to relate their own work to scholars within the field – e.g., through cooperation in research projects.

The development of a central methodological discourse in comparative law would tend to change this perception of amorphousness. It would provide a set of reference points for those looking at the field. The term "comparative law" would begin to acquire recognizable contours and increased content. This could occur at the level of the field as a whole or in particular areas. One might envision, for example, a set of comparative law discussions about method that focus on the use of public choice tools in comparing legal systems or on the use of empirical methods. The discussions would give these efforts a profile and provide a means for those outside the field to recognize who is doing what in it. It would thus provide a bridge to other disciplines because it would allow those outside the field to identify the contents of the field. Methods can direct, or at least, influence what people see as issues and how they are likely to deal with those issues. They therefore allow others to recognize what they are likely to get if they turn to comparative law for information, insights, or answers.

C. Method and the Internal Dynamics of Comparative Law

This type of sustained and focused attention to methodological improvement could have similar benefits within the comparative law "community." It would provide an ongoing framework for relating the work of individual scholars to the work of others who are pursuing similar lines of inquiry or considering how to pursue their own projects. In this sense, it can be a platform for transmitting and thus sharing information about the content of projects, and it can provide feedback loops for evaluating experience with particular methodological approaches. It would also tend to improve the capacity of scholars in the field to achieve greater transparency in evaluating work within the field. Without a central methodological discussion, there may be few, if any, shared reference points for evaluating the work of scholars in the field. Such effects and benefits can, in turn, create incentives for scholars to do comparative work. They lower the cost of acquiring information about who is doing what in the area and increase the potential for collaboration and mutual enrichment among those who do such work.

D. Method and Product

Each of the above influences has the potential to improve the product of the comparative law enterprise – the quality and value of the work produced by comparative law scholars. Improved internal dynamics among comparative law scholars could improve the intellectual tools and enhance the perspectives of comparative law scholars. The improved transparency that a central methodological framework can provide should improve incentives for scholars to develop and seek to satisfy the standards that will be applied in evaluating their work. It can also spread insights into the advantages, pitfalls and "know-how" of using specific comparative law tools, thus providing incentives for producing better scholarship.

These are all ways of adding value to comparative law scholarship, but it is important to emphasize that they do not impose constraints on individual scholars. Discussions of method in comparative law often elicit comments such as "That will just limit us. Everybody should do what they want to do." It is common to assume that methods must be hegemonic and

constraining. This misunderstands the kind of methodological discussion envisioned here, which *would not in any way constrain individual scholars* in their pursuit of comparative knowledge and insights. It would not seek to push individual scholars in particular ways or to discourage them using whatever forms of comparative analysis they find valuable and insightful. The project of relating individual efforts to one another in relation to a goal need not be confining! Quite to the contrary, it is intended to add to the tools available to comparative law scholars and disseminate knowledge about how they can best be used and what consequences should be anticipated from using them

It is also common to hear comments from comparative law scholars that categorically reject the idea that there can be some kind of central methodological discussion. The assumption here seems to be that there are many goals and thus many methods are necessary. While it is true that comparative analysis can involve many goals, this does not in itself preclude efforts to develop methodological propositions and tools that can inform and enrich comparative law analysis in whatever contexts it might be used.

VI. CONCLUDING COMMENTS: ENGAGED DISTANCE RATHER THAN ISOLATION?

This brief essay began by identifying elements of an imagined encounter with complexity science. In that imagined encounter, we identified reactions of comparative law scholars to a rapidly-developing science that studies the operations of complex systems. Legal systems – both traditional and increasingly also on the transnational level – are complex systems, and thus complexity science deals directly with issues that are central to comparative law. Yet, comparative law scholars have paid virtually no attention to these new analytical tools, and their reactions to the very idea that this could be relevant have been generally characterized by distance and even hostility. We have seen that such reactions are deeply rooted in experiences of "separateness" among comparative law scholars, perhaps especially in the United States. They rest on historically-conditioned assumptions about comparative law as a discipline and, especially, about the relationships between comparative law and all that is outside of it. Central to this self-image is the idea that there is no central method or central methodological discussion in comparative law

and that this is as it should be.

We have also seen, however, that this self-image may have significant consequences for comparative law and both its scholarly and practical roles. It may obscure potential opportunities for comparative law scholars to enrich and perhaps "improve" their product and to increase the relevance of what they do. The current widespread perception is that comparative law is not really a discipline, but just an amorphous group of scholars who happen to deal with foreign legal systems in some way. One way of changing that perception may be to develop a *sustained* methodological discussion that could give a profile to comparative law scholarship and allow it to become a field of study whose contours can be seen, related to and used. In the process it might also enrich the intellectual product of the comparative law community.

Comparative law scholars may prefer their current identity, and identities are not easily altered, but they should at least be aware of some of the costs that this identity brings with it. In a globalizing context, the potential value of comparative law scholarship grows dramatically. Comparative law scholars may want to reassess the costs of being "unrecognizable" as a discipline and question whether they really want to miss the opportunities that a richer methodological discussion could provide.